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IS HUMAN TRAFFICKING A CRIME THAT SHOULD NOT BE SUBJECT TO ANY STATUTE OF LIMITATIONS?

by María Barraco*

This paper has two aims: 1) to analyze if the prohibition of human trafficking and slavery are jus cogens norms, and if they consequently constitute crimes that shall not be subject to any statute of limitations; 2) to analyze if the criminal provisions on slavery and human trafficking of the States Parties to the American Convention on Human Rights (ACHR) establish statutes of limitations for these crimes. This paper concludes that human trafficking is in fact a crime that shall not be subject to any statute of limitations when the purpose of exploitation is slavery and when the latter has been achieved. In addition, this paper finds that States Parties to the ACHR that do not contemplate this particularity should improve their criminal law.

I. INTRODUCTION & GENERAL CONCEPTS

Despite the various conventions prohibiting human trafficking,¹ this crime was not defined by internation-

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¹ International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 1 L.N.T.S. 83; International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 3 L.N.T.S. 278; International Convention for the Suppression of Traffic in Women and Children, Sep. 30, 1921, 9 L.N.T.S. 415; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271; Organization of American States, Inter-American Convention on International Traffic in Minors, Mar. 18, 1994, O.A.S.T.S. No. 79.

al law until December 2000 in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).²

According to Article 3(a) of the Palermo Protocol, human trafficking consists of three cumulative elements:³ an action (“recruitment, transportation, transfer, harboring or receipt of persons”); the means used to secure that action (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person”); and the purpose of the action for which the means were used (“[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”).⁴ It is important to highlight that for a situation of trafficking to arise, it is not necessary for the exploitation to be achieved.⁵

The aforementioned definition was accepted by the European Court of Human Rights (ECtHR),⁶ the Inter-American Court of Human Rights (IACtHR)⁷ and the Inter-American Commission of Human

² ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 12 (2010); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the U.N. Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol].

³ GALLAGHER, *supra* note 2, at 29.

⁴ See Palermo Protocol, *supra* note 1, art. 3(c) (regarding trafficking in children, the “means” requirement is waived).

⁵ U.N. Office on Drugs and Crime, Legislative Guides For The Implementation Of The United Nations Convention Against Transnational Organized Crime And The Protocols Thereto, Part II, para. 33.

⁶ Rantsev v. Cyprus & Russia, 25965/04 Eur. Ct. H.R. 65 (2010).

⁷ Caso Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Exceptions, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 318, ¶¶ 284, 290 (Oct. 20, 2016).

Rights (IACHR).⁸ Both the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights (ACHR), prohibit human trafficking in Article 4⁹ and Article 6¹⁰ respectively. In this sense, trafficking in persons often involves violations of other human rights recognized in human rights treaties, such as the right to life, the right to personal integrity, and the right to personal liberty and security.¹¹

II. STATES' GENERAL OBLIGATIONS TOWARDS HUMAN TRAFFICKING

States' main obligation regarding the crime of human trafficking is to respect and ensure that no one is subjected to it.¹² Moreover, states are obliged to:

- Prevent trafficking cases,¹³ adopt an integral preventive policy, and carry out inspections to detect any situation of human trafficking or slavery;¹⁴
- Eliminate the legislation that tolerates slavery, servitude, and human trafficking¹⁵ and criminalize those crimes;¹⁶
- Initiate *ex officio* an immediate effective investigation to identify, judge and sanction those respon-

sible when there is a complaint or a well-founded reason to believe that individuals under their jurisdiction are being victims of human trafficking or slavery;¹⁷

- Investigate and prosecute the offenses;¹⁸
- Protect and assist human trafficking victims,¹⁹ which specifically includes: the non-criminalization of the victims,²⁰ provision of legal assistance,²¹ and voluntary and safe return;²²
- Compensate and provide restitution to human trafficking victims;²³
- Confiscate assets: proceeds of the crime of human trafficking or elements used in or destined for use in committing the crime;²⁴
- Cooperate with other States Parties of the Convention against Transnational Organized Crime (UNTOC), which includes joint investigations,²⁵ information exchange, and training.²⁶

III. HUMAN TRAFFICKING AS A CRIME THAT SHALL NOT BE SUBJECT TO ANY STATUTE OF LIMITATIONS

A. Jus Cogens Norms, Grave Violations of Human Rights and Statutes of Limitations: The Case of the Prohibition of Slavery

A *jus cogens* norm is defined by Article 53 of the Vienna Convention on the Law of Treaties as “a norm accepted and recognized by the international com-

⁸ Inter-Am. Comm'n H.R., *Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System*, OEA/Ser.L/V/II, ¶ 136 & ¶ 220 (2015) [hereinafter *Human Rights of Migrants*]; Inter-Am. Comm'n H.R., *Human Rights of Migrants and Other Persons in the Context of Human Mobility In Mexico*, OEA/Ser.L/V/II., doc. 48/13 ¶ 348 (2013) [hereinafter *Human Rights of Migrants in Mexico*].

⁹ Convention for the Protection of Human Rights and Fundamental Freedoms art. 4, Nov. 4, 1950, 213 U.N.T.S. 221 (even though “human trafficking” is not recognized as such in Article 4, the E.Ct.H.R. has understood that such crime is included in the Article); *Rantsev v. Cyprus & Russia*, at 60-61.

¹⁰ American Convention on Human Rights art. 6, Nov. 22, 1969, 1144 U.N.T.S. 123.

¹¹ *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, No. 318 at ¶ 273; *Human Rights of Migrants*, *supra* note 8, at ¶ 223; *Human Rights of Migrants in Mexico*, *supra* note 8, at ¶ 350.

¹² *Velasquez Rodriguez v. Honduras*, Merits, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 04, ¶ 165-166 (Jul. 29, 1988); *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, No. 318 at ¶ 317.

¹³ Palermo Protocol art. 9, *supra* note 2; GALLAGHER, *supra* note 2, at 414.

¹⁴ *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, at ¶ 319-320.

¹⁵ *Id.*

¹⁶ *Id.*; Palermo Protocol, *supra* note 2, at art. 5; GALLAGHER, *supra* note 2, at 371.

¹⁷ *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, No. 318 at ¶¶ 319-20.

¹⁸ Palermo Protocol, *supra* note 2, at art. 4; GALLAGHER, *supra* note 2, at 382.

¹⁹ *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, No. 318 at ¶¶ 319-20; Palermo Protocol, *supra* note 2, at art. 6; Off. of the High Comm'r for Hum. Rts., Recommended Principles and Guidelines on Human Rights and Human Trafficking, U.N. Doc E/2002/68/Add.1 (May 20, 2002), at Guideline 6 [hereinafter “UN Principles”].

²⁰ UN Principles, *supra* note 19, at Guideline 2.5; GALLAGHER, *supra* note 2, at 276.

²¹ Palermo Protocol, *supra* note 2, at art. 6.3.b; UN Principles, *supra* note 19, at Guideline 6.5; GALLAGHER, *supra* note 2, at 315.

²² Palermo Protocol, *supra* note 2, at art. 8; UN Principles, *supra* note 19, at Guideline 6.7; GALLAGHER, *supra* note 2, at 339.

²³ Convention against Transnational Organized Crime (Nov. 15, 2000), at art. 25.2 [hereinafter “UNTOC”]; GALLAGHER, *supra* note 2, at 354-360.

²⁴ UNTOC, *supra* note 23, art. 12-13; GALLAGHER, *supra* note 2, at 400.

²⁵ UNTOC, *supra* note 23, art. 19.

²⁶ Palermo Protocol, *supra* note 2, art. 10.

munity of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”²⁷ The prohibition of slavery has been considered by the IACtHR as a *jus cogens* norm.²⁸ Likewise, the prohibition of slavery has been recognized as a *jus cogens* norm by the IACHR²⁹ and the International Law Commission (ILC).³⁰

In the case *Hacienda Brazil Verde vs. Brazil*, the first decision rendered by the IACtHR regarding Article 6 of the ACHR (which prohibits human trafficking and slavery),³¹ the Court understood that, *since slavery and its analogous forms are a jus cogens norm, statutes of limitations do not apply to the investigation and prosecution of such crimes*.³² In addition, to support this conclusion, it argued that *crimes that involve grave violations of human rights, such as slavery, cannot be subject to any statute of limitations*.³³ In this vein, the IACtHR ruled in a subsequent decision that “sexual slavery”³⁴ is a *jus cogens* norm subjected to all the cor-

responding obligations.³⁵ Accordingly, cases of sexual slavery cannot be subject to any statute of limitations either.

Similarly, in its previous case *Barrios Altos v. Peru*, the Court understood that provisions on prescriptions are not applicable to “serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.”³⁶

This same conclusion was affirmed regarding crimes against humanity.³⁷ Accordingly, the Court considered that statutes of limitations were not applicable to the crimes of enforced disappearance³⁸ and torture³⁹ since they constituted grave violations of human rights.

These conclusions reached by the IACtHR are in accordance with international law. Professor Theo Van Boven, former Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights, understood that “claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations.”⁴⁰ In that report, he considered to be gross violations of human rights the crimes of “genocide; slavery and slavery-like practices; summary or arbitrary executions; torture and cruel, inhuman or degrading treatment or punishment; enforced disappearance; arbitrary and prolonged detention; deportation or forcible transfer of population; and systematic discrimination, in particular based on

²⁷ Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 83 (Jul. 8, 1996); Jochen A. Frowein, *Ius Cogens*, OXFORD PUB. INT’L LAW (Mar. 2013).

²⁸ Caso Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Exceptions, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 318, ¶ 249 (Oct. 20, 2016); Aloeboetoe et al. v. Suriname, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15, ¶ 57 (Sep. 10, 1993).

²⁹ Human Rights of Migrants, *supra* note 8 at ¶ 219; Captive Communities: Situation of the Guaraní Indigenous People and the Contemporary Forms of Slavery in the Bolivian Chaco, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II, doc. 58 ¶ 54 (2009).

³⁰ Int. Law Comm’n, *Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries Thereto*, ¶ 5, U.N. Doc. A/56/10 (2001).

³¹ The case concerned the situation suffered by eighty-four workers in a private-owned Brazilian ranch, who had been subjected to trafficking in persons and slavery. The Court analyzed the “modern” definitions of slavery, servitude, human trafficking and forced labor, as well as the state’s obligations regarding them.

³² *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, at ¶ 412-13.

³³ *Id.* at ¶ 454 (emphasis added).

³⁴ See Gay J. McDougall, *Contemporary Forms of Slavery*, ¶ 8, U.N. Doc. E/CN.4/Sub.2/2000/21 (Jun. 6, 2000) (defining sexual slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual abuse”).

³⁵ *Lopez Soto v. Venezuela*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 362, ¶ 176 (Sep. 26, 2018).

³⁶ *Barrios Altos v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 41 (Mar. 14, 2001); *Rochela Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 294 (May 11, 2007).

³⁷ *Almonacid Arellano et al. v. Chile*, Preliminary Exceptions, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154, ¶ 153 (Sep. 26, 2006).

³⁸ *Tenorio Roca et al. v. Peru*, Preliminary Exceptions, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 315, ¶ 268 (Jun. 22, 2016).

³⁹ *Ibsen Cardenas v. Bolivia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 208 (Sep. 1, 2010).

⁴⁰ Theo Van Boven, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, ¶ 135, U.N. Doc. E/CN.4/Sub.2/1993/8 (Jul. 2, 1993).

race or gender.”⁴¹ For its part, the ILC considered that slavery, genocide, and apartheid are serious breaches of human rights.⁴²

It is clear that the prohibition of slavery and its analogous forms, such as sexual slavery or servitude, are *jus cogens* norms that involve grave violations of human rights that, at least in the American Region, cannot be subject to any statute of limitations. That said, *can the same conclusion be affirmed regarding the crime of human trafficking?*

B. The Crime of Human Trafficking and the Statutes of Limitations

The Palermo Protocol contains no prescription of statutes of limitations. Due to the absence of a provision, Art. 11.5 of the United Nations Convention against Transnational Organized Crime applies.⁴³ This article establishes that “[e]ach State Party shall, where appropriate, establish under its domestic law a long statute of limitations period.” That is to say, there is no prohibition to apply statutes of limitations to human trafficking. Nevertheless, the United Nations Office on Drugs and Crime (UNODC) has considered that states should not establish a statute of limitations on the crime of human trafficking considering the gravity of the crime because “such a provision may serve to send a strong message of deterrence.”⁴⁴

In the Commentary to the ACHR, Professor Federico Andreu considered that human trafficking can be regarded as a “grave violation of human rights.”⁴⁵ Similarly, Professor Pellet understood that the prohibition of human trafficking is a *jus cogens* norm, amongst others such as the right of peoples to self-determination, the prohibition of slavery, racial discrimination,

torture, genocide, and crimes against humanity.⁴⁶ Furthermore, the Council of Europe enacted the guidelines on “Eradicating Impunity for Serious Human Rights Violations,” including human trafficking as a serious violation. In accordance with what has been so far discussed above, it could be understood that no statute of limitations should be applied to the crime of human trafficking.⁴⁷

However, no other international organ or tribunal has affirmed that this crime is a *jus cogens* norm. Not even the Special Rapporteurs on trafficking in persons, especially women and children made that conclusion. Nevertheless, I do consider there to be a specific situation of human trafficking in which the prohibition to establish statutes of limitations to the investigation and prosecution of the crime applies: *when the purpose of the action (the third element in the human trafficking’s definition) is slavery or any of its analogous forms, and when that purpose has been achieved*.

As it was stated in Part 1, one of the possible forms of exploitation is slavery or its analogous forms. This purpose of enslavement may not be achieved, and the attempt will still be considered human trafficking if the other elements are present (that is to say, the purpose and the means to secure that purpose). But, if the human trafficking victim has indeed been exploited in the form of slavery or its analogous forms, such crime shall not be subject to any statute of limitations. And that is because even though the crime is catalogued as human trafficking, it has involved slavery, a *jus cogens* norm, which cannot be subject to any statute of limitations.

To conclude, the prohibition of slavery is a *jus cogens* norm, however that cannot be similarly affirmed regarding the prohibition of human trafficking. The IACtHR has understood that the investigation and prosecution of slavery and its analogous forms cannot be subject to any statute of limitations. Even though nothing has been said regarding human

⁴¹ *Id.* at ¶ 13.

⁴² Int’l Law Comm’n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries* 85 (2001), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

⁴³ GALLAGHER, *supra* note 2, at 80.

⁴⁴ U.N. Office on Drugs and Crime, *Combating Trafficking in Persons: A Handbook for Parliamentarians* (2009), at 36, https://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf

⁴⁵ F. Andreu, *Artículo 6. Prohibición de la Esclavitud y Servidumbre*, in: C. STEINER ET AL. (EDS), *CONVENCIÓN AMERICANA DE DERECHOS HUMANOS: COMENTARIO* 118 (2014).

⁴⁶ A. Pellet, *Responsibility of States in Cases of Human-Rights or Humanitarian-Law Violations*, in: J. CRAWFORD ET AL., *THE INTERNATIONAL LEGAL ORDER: CURRENT NEEDS AND POSSIBLE RESPONSES* 236 (2014).

⁴⁷ Directorate General of Human Rights and Rule of Law, *Eradicating Impunity For Serious Human Rights Violations* 23 (2011), <https://rm.coe.int/1680695d6e%20>.

trafficking, there is a specific circumstance where this prohibition also applies: when the purpose of the trafficking was slavery or its analogous forms, and when such purpose was achieved in the facts of the case.

IV. THE 'CONTROL OF CONVENTIONALITY' DOCTRINE & COMPLIANCE IN THE SUBJECT-MATTER BY THE STATES PARTIES TO THE ACHR

A. The Definition of the "Control of Conventionality" and the Case *Hacienda Brazil Verde* vs. Brazil

The "Control of Conventionality" doctrine imposes on States Parties to the ACHR the obligation to interpret their legal instruments taking into consideration the ACHR and the Inter-American *corpus juris*.⁴⁸ Accordingly, the Conventionality Control requires all state authorities, and specifically judges, to apply the ACHR as interpreted by the Court in its jurisprudence.⁴⁹ Furthermore, this would imply that States Parties to the ACHR are obliged to adjust their national legislation with the provisions contained on the ACHR and with the Court's rulings.

It is worthwhile to note that in the case *Hacienda Brazil Verde*, the Court reiterates the state's obligation to exercise *ex officio* the Conventionality Control by every state organ.⁵⁰ This obligation, in conjunction with the conclusions in Part 3 of this article, would entail that States Parties should modify their national legislation if they apply statutes of limitations on the crime of slavery and its analogous forms and/or human trafficking when the purpose of slavery has been achieved. Precisely, in the *Hacienda Brazil Verde* case, the Court establishes as reparation that Brazil must take the appropriate legislative steps to guarantee that slavery and its analogous forms are not subjected to any statute of limitations.⁵¹ This was determined because, in the particular case, victims were unable to access justice to obtain redress, since the crimes

punished in Article 149 of Brazil's Criminal Code had been subject to the statute of limitations established in the Criminal Code. Consequently, this situation led to impunity for the crimes committed.

B. Analysis of the States Parties to the ACHR's Criminal Provisions on Slavery and Human Trafficking and the Establishment of Statutes of Limitations

In order to analyze the situation in the American region, the following chart summarizes the criminal law of each State Party to the ACHR regarding the crimes of slavery and human trafficking, and their corresponding term of statute of limitations.⁵² Furthermore, it will establish if the legislative situation complies with the decision rendered in the case *Hacienda Brazil Verde*.

⁴⁸ E. Ferrer Mac-Gregor, *Conventionality Control: The New Doctrine of the Inter-American Court of Human Rights*, 109 AM. J. INT'L L. 93, 93 (2015).

⁴⁹ A. E. Dulitzky, *An Inter-American Constitutional Court? The Invention of the Conventionality Control by the Inter-American Court of Human Rights*, 50 TEXAS INT'L L. J. 45, 52 (2015).

⁵⁰ *Caso Trabajadores de la Hacienda Brasil Verde v. Brazil*, Preliminary Exceptions, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 318, ¶ 408 (Oct. 20, 2016).

⁵¹ *Id.* at ¶ 455.

⁵² The Chart does not contain information regarding Granada, Jamaica and Suriname, since there was no official information available. The main source used for the chart were the criminal codes uploaded at the official page of the OAS. Red Hemisférica de Cooperación Jurídica en Materia Penal, ORG. OF AM. STATES, <http://web.oas.org/mla/es/Paginas/default.aspx> (last visited Nov. 17, 2020).

State	Criminal Law regarding slavery	Criminal Law regarding human trafficking	Term of the statute of limitations	Compliance
Argentina	Criminal Code, Article 140: punishes slavery or servitude, under any modality, forced labor or services and servile marriage.	Criminal Code, Article 145 bis: Punishes Human Trafficking, with the purpose of: slavery or servitude, under any modality; forced labor or services; servile marriage; the exploitation of the prostitution of others or other forms of sexual exploitation; the removal of organs, or human fluids or tissues; child pornography.	Slavery General Statute of limitations prescribed in Criminal Code, Art. 65: between 4 and 15 years.	No.
			Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 65: between 4 and 15 years.	

Barbados	Offences against the person Act, Art. 33: punishes slavery.	Transnational Organized Crime, Prevention and Control, Act 2000, Article 8: punishes human trafficking for the purpose of exploitation. Exploitation includes: exploitation of the prostitution of others or any other form of sexual exploitation; forced labor, slavery, servitude or similar practices; and the removal of human organs or human tissue without the consent of the victim or the legal guardian of the victim in circumstances where there is no medical or therapeutic need on the part of the victim for the removal.	Slavery No Information	-
			Human Trafficking No information	

Bolivia	Criminal Code, Article 291: punishes slavery or analogous situation.	Criminal Code, Article 281 bis: Punishes human trafficking, for the purpose of: Commerce of the Human Being or other acts of dispositions; the removal, commerce or illicit disposition of human fluids or corporal liquids, cells, organs or human tissues; slavery or analogous situation; Labor exploitation, forced labor or any situation of servitude; “consumerist servitude”; Commercial sexual exploitation; Forced pregnancy; Sexual tourism; adoption; forced begging; servile marriage or union; recruitment for arm conflict or religious sects; criminal activities; illicit biomedical investigations;	<p>Slavery General Statute of limitations prescribed in Criminal Code, Art. 101: 8 years.</p> <p>Human Trafficking Law 263/2012, Article 44: Human trafficking shall not be subjected to any statute of limitations.</p>	Partial Compliance
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Brazil	Criminal Code, Article 149: Punishes slavery or analogous situations, forced labor or any form of degrading treatment at work.	Criminal Code, Article 149-A (added by Law 13.344): Punishes Human Trafficking, for the purpose of remove organs, tissues or parts of the body; slavery or any type of servitude; illegal adoption; or sexual exploitation.	Slavery General Statute of limitations pre-scribed in Criminal Code, Art. 109: between 12 and 20 years.	No.
			Human Trafficking General Statute of limitations pre-scribed in Criminal Code, Art. 109: between 12 and 20 years.	
Chile	No provisions regarding slavery or any analogous situation.	Criminal Code, Article 411 ter., quáter and quinquies: punishes human trafficking, for the purpose of sexual exploitation, pornography, forced labor or services, servitude, slavery or analogous situation, organs removal.	Slavery -	No.
			General Statute of limitations prescribed in Criminal Code, Art. 94: between 5 and 10 years.	
Colombia	No provisions regarding slavery or any analogous situation.	Criminal Code, Article 188 A: Punishes Human Trafficking, for the purpose of sexual exploitation, forced labor or services, slavery or analogous situations, servitude, forced begging, forced marriage, removal of organs, sexual tourism, or other forms of exploitation.	Slavery -	No.
			General Statute of limitations prescribed in Criminal Code, Art. 83: 20 years.	

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Costa Rica	Criminal Code, Article 189: Punishes Servitude or any analogous situations.	Criminal Code, Article 172: Punishes Human Trafficking, for the purpose of exploitation, sexual or labor servitude, slavery or any analogous situation, forced labor or services, begging, forced marriage, illicit removal of organs and illicit adoption.	Slavery General Statute of limitations pre-scribed in Criminal Code, Art.84: between 5 years - 4 months and 16 years.	No.	
			General Statute of limitations pre-scribed in Criminal Code, Art.84: between 8 and 21 years – 4 months.		
Dominica	No provisions regarding slavery or any analogous situation.	Transnational Organized Crime (Prevention and Control Act) 13/2013. Art. 8: punishes Human Trafficking for the purpose of : the exploitation of the prostitution of others or any other form of sexual exploitation; forced labor, slavery, servitude or similar practices; or the removal of human organs or human tissue without the consent of the victim or the legal guardian of the victim in circumstances where there is no medical or therapeutic need on the part of the victim for the removal;	Slavery -	No.	
			Human Trafficking No information.		

Dominican Republic	No provisions regarding slavery or any analogous situation.	Law 137-03, Art.3: Punishes Human Trafficking, for the purpose of any form of sexual exploitation, pornography, forced labor or services, debt servitude, forced marriage, irregular adoption, slavery or any analogous situation, servitude or removal of organs.	Slavery -	No.
			Human Trafficking General Statute of limitations pre-scribed in Criminal Procedural Code, Art. 45: 10 years.	
Ecuador	Criminal Code, Article 82: Punishes slavery.	Criminal Code, Article 91 and 92: Punish Human Trafficking, for the purpose of: removal or commercialization of organs, human tissues or fluids, genetic material of alive individuals; sexual exploitation (including forced prostitution, sexual tourism and child pornography); labor exploitation (including forced labor, debt servitude, and child labor); forced marriage or union; illegal adoption; begging; recruitment for armed conflicts; any other form of exploitation.	Slavery General Statute of limitations pre-scribed in Criminal Code, Art. 75: 39 years.	Partial Compliance.
			Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 75: 24 to 39 years.	

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El Salvador	Criminal Code, Article 150: Punishes servitude (among other crimes against personal freedom).	Criminal Code, Article 367-B: Punishes Human Trafficking, for the purpose of: sexual exploitation, forced labor or services, analogous situations to slavery; removal of organs, illegal adoptions or forced marriage Criminal Code, Article 367-	Slavery General Statute of limitations prescribed in Criminal Code, Art. 99: between 3 years and 32 years and 4 months.	No.
		C: aggravating circumstances.	Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 99: between 3 years and 8 months and 13 years and 4 months.	
Guatemala	Criminal Code, Article 202: Punishes Servitude and any other analogous situation.	Criminal Code, Article 202 ter: Punishes Human Trafficking, for the purpose of: prostitution of others or any other form of sexual exploitation; forced labor or services, or any other form of labor exploitation; begging; any form of slavery; servitude; commerce of human beings; removal and commerce of human organs or human tissue; the recruitment of minors for organized crime groups; illegal adoption; pornography; forced pregnancy; and forced marriage or union.	Slavery General Statute of limitations prescribed in Criminal Code, Art. 107: between 13 years and 4 months and 18 years and 1 month.	No.
			Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 107: 20 years.	

Haiti	No provisions regarding slavery or any analogous situation.	Law CL 2014-0010, Article 11: Punishes Human Trafficking for sexual and labor exploitation, removal of organs or tissues, and illegal adoption. Law CL 2014-0010, Article 21: Aggravating circumstances (for example, the victim is a minor).	Slavery -	Partial Compliance.
			Human Trafficking Law CL 2014-0010, Article 30: 30 years for human trafficking, human trafficking with aggravating circumstances does not prescribe.	
Honduras	No provisions regarding slavery or any analogous situation.	Decree 59-2012, Article 52: Punishes Human Trafficking, for the purpose of: servitude, slavery or any other analogous situation; forced labor or services; begging; forced pregnancy; forced marriage; illicit traffic of organs, human tissues or fluids; commerce of human beings; sexual exploitation; illegal adoption; recruitment of minors for criminal activities.	Slavery -	Partial Compliance.
			Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 97: 22 years and 6 months for Human Trafficking and 33 years and 9 months for Human Trafficking with aggravating circumstances.	

México	General law on the prevention, punishment and eradication of offenses in the field of trafficking in persons and for the protection and assistance of the victims of these offenses, Art. 11: punishes slavery.	General law on the prevention, punishment and eradication of offenses in the field of trafficking in persons and for the protection and assistance of the victims of these offenses, Art. 10: punishes human trafficking.	<p>Slavery Statute of limitations prescribed in Criminal Code, Art. 105: between 7 years and 6 months and 15 years.</p> <p>Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 105: between 3 years and 7 years and 6 months.</p>	No.
Nicaragua	Criminal Code, Article 315: Punishes slavery and or analogous situations, forced or mandatory labor, servitude, any other form of labor exploitation.	Criminal Code, Article 182: Punishes Human Trafficking, for the purpose of slavery and or analogous situations, forced or mandatory labor; servitude; sexual exploitation or illegal adoption; child pornography; forced marriage; illicit traffic of organs, human tissues or fluids; commerce of human beings; irregular adoption; begging.	<p>Slavery General Statute of limitations prescribed in Criminal Code, Art. 131: between 10 and 15 years.</p> <p>Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 131: between 10 and 15 years.</p>	No.

Panamá	<p>Law 79/2011, Article 456-D: Punishes forced labor or services.</p> <p>No provisions regarding slavery or any analogous situation.</p>	<p>Law 79/2011, Article 456-A: Punishes Human Trafficking, for the purpose of prostitution, sexual or labor servitude, slavery or analogous situations, forced labor or services, forced marriage, begging, illicit removal of organs or illegal adoption.</p>	<p>Slavery -</p> <p>Forced Labor or Services General Statute of limitations prescribed in Criminal Code, Art. 119: between 6 and 15 years.</p> <p>Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 119: between 15 and 30 years.</p>	No.
Paraguay	<p>No provisions regarding slavery or any analogous situation.</p>	<p>Law 4788/2012: Punishes Human Trafficking, for the purpose of sexual exploitation, labor exploitation (slavery, servitude, forced labor, forced marriage or any analogous situation), or illicit removal of organs.</p>	<p>Slavery -</p> <p>Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 102: between 8 and 15 years.</p>	No.

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Perú	Legislative Decree No. 1323, Article 153-C: punishes slavery and servitude.	Criminal Code, Article 153: Punishes human trafficking, for the purpose of: the commerce of children and teenagers, prostitution and any form of sexual exploitation, slavery or any other analogous situation, any form of labor exploitation, begging, forced labor or services, removal or traffic of organs, somatic tissues or its human components, and any other analogous form of exploitation.	Slavery General Statute of limitations pre-scribed in Criminal Code, Art. 80: between 15 and 30 years.	No.
		Criminal Code, Article 153 A: Aggravating circumstances.	Human Trafficking General Statute of limitations pre-scribed in Criminal Code, Art. 80: between 15 and 20 years.	

Uruguay	<p>Criminal Code, Article 280: Punishes slavery, servitude under any modality, and forced labor or analogous situation.</p> <p>Criminal Code, Article 280 bis: Punishes sexual slavery.</p>	<p>Law 18.250, Article 78: Punishes human trafficking in the context of migration.</p> <p>Law 19.643, Article 4: Punishes human trafficking, for the purpose of sexual exploitation, forced marriage, forced pregnancy, forced labor or services, slavery or analogous situations, servitude, labor exploitation, forced begging, the removal or illicit transfer of organs, or human fluids or tissues, and the commerce of human beings, especially children and teenagers.</p>	<p>Slavery General Statute of limitations prescribed in Criminal Code, Art. 117: between 15 and 20 years.</p> <p>Human Trafficking General Statute of limitations prescribed in Criminal Code, Art. 117: between 15 and 20 years.</p>	No.
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First, it must be noted that states with no provision at all regarding slavery and/or human trafficking are violating the obligation to criminalize those crimes,⁵³ as stated in Part 2. Further, considering that the IACtHR obliged Brazil to modify its legislation in order to eliminate the statute of limitations regarding the investigation and punishment of the crime of slavery and its analogous forms, and due to the “Control of Conventionality” Doctrine, every State Party to the ACHR should also adjust its legislation.

However, after analyzing the legislations of every State Party to the ACHR, it can be concluded that none is currently complying with this obligation. Brazil, directly bounded by the decision of the Court, in accordance with Article 68.1 of the ACHR, has not fixed its criminal law. In fact, the majority of states establish short statutes of limitations (fifteen years or less). Only Ecuador has a long statute of limitations for the crime of slavery (thirty-nine years).

Regarding human trafficking, only Bolivia has eliminated a statute of limitations to the crime of human trafficking; Haiti has done so when human trafficking is committed with aggravating circumstances. Further, only Honduras has established a long statute of limitations (thirty-three years if the crime is committed with aggravating circumstances), together with Ecuador (thirty-nine years if the victim of human trafficking dies).

Specifically, States Parties to the ACHR that subject the crime of slavery to a statute of limitations are indeed violating their international obligations. Conversely, States Parties that do not contemplate this particularity on the crime of human trafficking would not contravene, at first, any international law. However, states should be aware that, when a human trafficking case involves slavery or its analogous forms, and slavery and/or any of its analogous forms have been achieved, that specific crime must not be subject to any statute of limitations.

⁵³ Caso Trabajadores de la Hacienda Brasil Verde v. Brazil, Preliminary Exceptions, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 318, ¶¶ 319-320 (Oct. 20, 2016); Palermo Protocol, *supra* note 2, art. 5.

V. CONCLUSION

Various sources of international law affirm that the crime of slavery is a *jus cogens* norm. Accordingly, the obligation to prevent and prohibit slavery or its analogous forms is not subject to any statute of limitations. The case *Hacienda Brazil Verde* develops this obligation and obliges Brazil (by virtue of art. 68.1 of the ACHR) and the rest of the States Parties to it (by virtue of the “Control of Conventionality” Doctrine) to adjust their legislation.

This case also opens the possibility that human trafficking is a crime not subject to any statute of limitations when the purpose of human trafficking is slavery or its analogous forms, such as sexual slavery, and this purpose has been achieved. States should modify their criminal codes in order to address this situation. States should not only comply with their international obligations, but also effectively guarantee the victims’ rights. Human trafficking cases imply grave violations of human rights, even more when its victims are subjected to slavery or sexual slavery. Moreover, human trafficking victims are usually in a vulnerable situation that prevents them from seeking the adequate redress to their sufferings. States should guarantee that these crimes will not remain unpunished, but rather investigated, prosecuted, and adequately remedied. Furthermore, there would be a “deterrent effect,” as UNODC suggested, which is absolutely necessary regarding all of these serious crimes.

The final question that may arise would be: why have states not yet complied with the obligation to eliminate the statutes of limitations regarding these crimes? I believe the main reason is that, after all, these crimes are dealt with within national criminal systems, were the human rights of the defendant must also be taken into consideration. In this vein, the institute of the statutes of limitations is an exception, and should be used cautiously. Nevertheless, I believe it is absolutely necessary that states adjust their legislation soon, not only in order to comply with their international obligations, but mainly to ensure that any victim of these grave crimes will always find an appropriate response from the judiciary system and will obtain an adequate redress for their suffering.